



ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR 1151

[Docket No. ATBCB-2022-0005]

RIN 3014-AA49

Bylaws

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Direct final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (hereafter, “Access Board,” or “Board”) has amended its bylaws. These amendments update agency procedures and enhance efficiency of operations.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

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SUPPLEMENTARY INFORMATION:

I. Background

At its November 9, 2022 meeting, the Access Board approved a number of changes to its bylaws, published at 36 CFR 1151. Specifically:

- A new section (to be codified at 36 CFR 1151.3) sets out requirements for Board membership, consistent with section 502 of the Rehabilitation Act (29 U.S.C. 792), and prescribes rules for the designation in writing of federal members and federal liaisons to the Board. Federal members are heads of agencies listed in paragraph (b) of § 1151.3, or their designees, who must be at Level IV of the Executive Schedule or higher. Federal members may include individuals serving in positions on a temporary or acting basis, in accordance with federal law and with agency rules, policies, and practices (paragraph

(c)(2)). Federal members and federal liaisons to the Board must be designated in writing (paragraphs (c)(1) and (3)), (which may include designation by electronic mail from a verifiable account), by someone who has authority to make the designation (paragraph (c)(4)). Written designations for members may identify the particular position within the agency, an individual, or both. Previously, the Board bylaws had no requirements concerning designation in writing of federal members or liaisons.

- The language in what was, prior to amendment of the bylaws, § 1151.3(a) (concerning officers), which says that the Board is the governing body of the agency, is now the first sentence in § 1151.2. Additionally, former paragraph (b) (Chair and Vice Chair) and former paragraph (c) (Elections), have been combined and redesignated as paragraphs (a)(1) and (2), former paragraph (d) (Executive Director) is now paragraph (b), and former paragraph (e) (General Counsel) is now paragraph (c).
- Section 1151.5 (previously § 1151.4), entitled “Delegations,” has been revised slightly. The title of paragraph (a) is now “Delegations to the Executive Committee,” since that is more consistent with the overall title of the section and better describes the contents of the paragraph, which describe delegations to, not by, the Executive Committee. A cross-reference to § 1151.7(a), which establishes the Executive Committee is also provided here, since this is the first reference to the Executive Committee in the bylaws.
- Section 1151.6 (previously § 1151.5) makes several changes with respect to Board meetings.
 - Paragraph (a) reduces the number of meetings from six annually to four. One of the meetings may be a public event outside of the Washington, DC area. Such a public event is not, as it previously had been, required each year, but may instead be a regular meeting of the Board.
 - Paragraph (b) says that meetings ordinarily will occur in January, April, July, and October, but does not specify a particular day or week during each month that the

meeting must occur. Previously, the bylaws said that regular meetings of the Board would occur on the Wednesday following the second Tuesday of the month. The Chair may reschedule a meeting to the month before or after the month specified in the bylaws.

- Paragraph (c) which is new, specifies that two meetings will be in-person, with an option for participation remotely, and two meetings may be entirely remote. This paragraph also states that the Board will comply with all applicable laws in the manner in which it conducts meetings, including the obligation to provide reasonable accommodations for Board members, employees, members of the public, and other participants (who might include, for example, individuals making presentations to the Board or a committee). Because of the addition of this paragraph, the lettering of subsequent paragraphs has been adjusted.
- Paragraph (d) alters the requirement, in former paragraph (c), that the Chair establish the agenda for Board meetings to say that the Chair may consult with the Executive Director as necessary and appropriate. This merely clarifies existing practice.
- Paragraph (e) provides for notice to the Board and to the public of the dates for each year's Board meetings at least 30 days prior to the January meeting. Notice may be provided on the Access Board's website and/or through any other means by which the public is likely to access it. Notice to members of the public will include language indicating that reasonable accommodation will be provided to enable participation in the meeting by individuals with disabilities, absent undue burden. Although the Board has historically provided reasonable accommodations for Board members, staff, and members of the public, inclusion of this language in the notice promotes the broadest level of participation possible by informing individuals with disabilities who may not be aware of the right to reasonable

accommodation, and is consistent with the Board's mission of promoting accessibility and inclusion for people with disabilities.

- Paragraph (f) says that the Chair will give notice of a meeting's cancellation at least 10 days prior to the meeting where practical, and if the meeting is a public meeting, will give notice to the public of the cancellation at the same time.
- Paragraph (g) requires reasonable advance notice of a special meeting, as well as the time place and purpose of the meeting. This is consistent with the current bylaws. However, anticipating the possibility that a special meeting could be a public meeting, the amendment provides for notice to the public of the meeting, including language indicating that the Board will provide reasonable accommodation to enable participation, absent undue burden.
- Paragraph (k)(5) provides five business days for a notational vote. The Chair has discretion to extend the period of time if, at the end of the voting period, there are an insufficient number of votes for the Board to take action. An amendment specifying that notational voting may occur through electronic mail reflects current practice. The bylaws previously provided for notational voting for actions taken between meetings of the Board, but did not describe the manner or form in which it would occur.
- Paragraph (l), which says that Board members shall be considered present at any meeting in which they participate by teleconference or other equipment that allows all participants to communicate with each other is unchanged from former paragraph (k). Its labeling simply changed when a new paragraph (c) was inserted.

Section 1151.7 (previously 1151.6) makes some changes to requirements related to committees.

- Paragraph (a)(1) has been revised to make certain duties of the Executive Committee discretionary rather than mandatory. For example, the Executive Committee now may, but is not required to, review and recommend changes to the bylaws prior to submission of proposed amendments to the Board.
- Paragraph (b)(2) has been revised to require the Board to vote only for the Chair of a subject matter committee. Previously, paragraph (b)(2) said that the Board elects both the Chair and Vice Chair of a subject matter committee; however, this contradicted the language in paragraph (b)(3) immediately following, which said that the Chair of the Board appoints members of standing committees other than the Chair, who is elected by the Board. The revised bylaws resolve the contradiction in favor of the Board voting on the Chair only, since this would simplify the voting process and have no impact on the operation of committees.
- Paragraph (b)(3) reduces the number of members on a subject matter committee from seven to nine to five to seven). Currently, the Board has four subject matter committees and three special committees, as well as an Executive Committee. The amendment to the bylaws reducing the number of committee members will actually facilitate committee work while limiting the number of committees to which specific Board members need to be assigned.

II. Regulatory Process Matters

Administrative Procedure Act

This final rule implements amendments to the Access Board's bylaws and solely addresses internal matters related to agency management and practices. As such, this rule is exempt from the notice-and-comment process pursuant to the Administrative Procedures Act. See 5 U.S.C. 553(a)(2), 553(b)(3)(A).

Executive Order 12866

This final rule establishes internal rules of agency procedure only. OMB has determined that the rule is not a significant regulatory action within the meaning of Executive Order 12866.

Congressional Review Act

This final rule is not a major rule within the meaning of the Congressional Review Act. See 5 U.S.C. 801 et seq.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to analyze regulatory options that may assist in minimizing any significant impact of a rule on small businesses and small governmental jurisdictions. See 5 U.S.C. 604, 605(b). Because this final rule relates solely to agency internal procedures and, moreover, is not subject to notice-and-comment rulemaking, the RFA is inapplicable.

Federalism (Executive Order 13132)

The Access Board has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132. The Board has determined that this action will not have a substantial direct effect on the States, the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

Paperwork Reduction Act

This final rule does not specify any new collections of information or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act. See 44 U.S.C. 3501 et seq.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (codified at 2 U.S.C. 1531 et seq.) (“UMRA”) generally requires that Federal agencies assess the effects of their discretionary regulatory actions that may result in the expenditure of \$100 million (adjusted for inflation) or

more in any one year by the private sector, or by State, local, and tribal governments in the aggregate. Because this final rule is not subject to notice-and-comment rulemaking, UMRA's analytical requirements do not apply. See 2 U.S.C. 1532(a).

For the reasons set forth in the preamble, the Access Board amends 36 CFR part 1151 as follows:

PART 1151- BYLAWS

1. The authority citation for part 1151 continues to read as follows:

Authority: 29 U.S.C. 792

2. Amend § 1151.2 by adding a new first sentence:

§ 1151.2 Authority

The Board is the governing body of the agency. * * *

§§ 1151.3 through 1151.7 [Redesignated]

3. Redesignate §§ 1151.3 through 1151.7 as §§1151.4 through 1151.8.

4. Add a new § 1151.3 to read as follows:

§ 1151.3 Membership

(a) *Public Members.* (1) The Board shall have thirteen members appointed by the President from among members of the general public, at least a majority of whom shall have disabilities.

(2) Members shall be appointed for a term of four years, may be reappointed to one successive term, and thereafter may not be reappointed unless they have not served on the Access board for at least two years prior to their reappointment. Each year, the terms of at least three members of the Board shall expire. A public member may continue to serve following expiration of the member's term if a successor has not been appointed.

(b) *Federal Members.* The remaining members of the Board shall be the heads of the following agencies or their designees whose positions are Executive Level IV or higher:

- (1) The Department of health and Human Services;
- (2) The Department of Transportation
- (3) The Department of Housing and Urban Development;
- (4) The Department of Labor;
- (5) The Department of the Interior;
- (6) The Department of Defense;
- (7) The Department of Justice;
- (8) The General Services Administration;
- (9) The Department of Veterans Affairs;
- (10) The United States Postal Service;
- (11) The Department of Education; and
- (12) The Department of Commerce.

(c) *Designation of Federal Board Members and Liaisons.* (1) Designation of a Federal Board member other than an agency head shall be made in writing by the agency head or by anyone authorized to provide such designation on behalf of the agency head. The designation may either be of a particular position, an individual, or both. If only a specific person is designated and not the position, a new designation will be required where appointment of another person to fill the position is subsequently made. The designation shall remain in effect for as long as provided for under applicable agency rules, regulations, or policies.

(2) An individual serving in an acting capacity, or who is otherwise temporarily serving, in a position at Executive Level IV or higher may be designated to serve on the Board, subject to any time limitations under applicable law, or under agency rules, regulations, or policies.

(3) Any newly-appointed Federal Board member shall designate in writing a liaison to the Board. A newly appointed Federal Board member may allow an individual previously serving as a liaison to the Board to continue to do so, but must provide a new designation in writing.

(4) Written designation of a Federal Board member or liaison may be in any form (including from a verifiable email address) indicating the identity of the person making the designation and that the person is authorized to do so.

5. Revise newly redesignated § 1151.4 to read as follows:

§ 1151.4 Officers

(a) *Chair; Vice Chair.* (1) The head of the agency is the Chair of the Board and, in his or her absence or disqualification, the Vice-Chair of the Board. As head of the agency, the Chair represents the Board whenever an applicable Federal statute or regulation imposes a duty or grants a right or authority to the head of the agency and has the authority to act in all matters relating to the operation of the Board. The Chair may delegate any such duties and responsibilities by written delegation of authority. The Chair supervises the Executive Director and evaluates his or her performance and approves performance evaluations of employees who report directly to the Executive Director. The authority to supervise, evaluate, and approve performance evaluations of the Executive Director and those employees who report directly to the Executive Director may only be delegated to the Vice-Chair of the Board.

(2) The Chair and the Vice-Chair of the Board shall be elected by a majority of the membership of the Board (as fixed by statute) and serve for terms of one year. Elections shall be held as soon as possible upon completion of the one year term of the Chair and Vice-Chair, ordinarily at the April meeting of the Board. If no new Chair or Vice-Chair has been elected at the end of the one-year term, the incumbents shall continue to serve in that capacity until a successor Chair or Vice-Chair has been elected. When the Chair is a public member, the Vice-Chair shall be a Federal member; and when the Chair is a Federal member, the Vice-Chair shall be a public member. Upon the expiration of the term as Chair of a Federal member, the subsequent Chair shall be a public member; and vice versa.

(b) *Executive Director.* The Executive Director is nominated by the Chair and confirmed by the Board. The Executive Director provides administrative leadership and supervision and

management of staff activities in carrying out the policies and decisions of the Board under the direction and supervision of the Chair. The Executive Director has the authority to execute contracts, agreements, and other documents necessary for the operation of the Board; hire, fire and promote staff (including temporary or intermittent experts and consultants); procure space, equipment, and supplies; and obtain interagency and commercial support services. The Executive Director directs compliance and enforcement activities in accordance with the procedures set forth in 36 CFR part 1150, including issuing citations and determinations not to proceed, conducting negotiations for compliance, entering into agreements for voluntary compliance, and performing all other actions authorized by law pertaining to compliance and enforcement not otherwise reserved to the Board.

(c) *General Counsel*. The General Counsel is nominated by the Chair and confirmed by the Board. The General Counsel is responsible to the Board under the supervision of the Executive Director.

6. In newly redesignated § 1151.5, revise the section heading and the first sentence of paragraph (a) as follows:

§ 1151.5 Delegations

(a) *Delegations to the Executive Committee*. The Board may delegate to the Executive Committee (provided for in § 1151.7(a)) authority to implement its decisions by a majority vote of the members present at a meeting and any proxies. * * *

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7. Revise newly redesignated § 1151.6 to read as follows:

§ 1151.6 Board meetings.

(a) *Number*. The Chair shall schedule four meetings of the Board each year starting January 2023, one of which may be a Board sponsored public event outside the Washington, DC area.

(b) *Timing.* Regular meetings of the Board shall ordinarily be held in January, April, July, and October of each calendar year. The Chair may reschedule a regular meeting of the Board to another date during the month preceding or following the month in which the regularly scheduled meeting was to occur.

(c) *Manner of conducting meetings.* Two regular Board meetings will be in person, but allow for participation by the Board, liaisons, and members of the public remotely, and two meetings may be entirely remote. The Board shall comply with all legal requirements concerning the manner of conducting meetings, including the requirement to provide reasonable accommodations for Board members, employees, members of the public, and other participants.

(d) *Agenda.* The Chair establishes the agenda for the meetings, in consultation with the Executive Director as necessary and appropriate. Members or committees may forward submissions for agenda items to the Chair and/or to the Executive Director. Except for items concerning the adoption, amendment, or rescission of the bylaws in this part, an item may be placed before the Board for consideration without the approval of the Chair upon a two-thirds vote of the members present at a Board meeting and any proxies to suspend the rules of order. Items concerning the adoption, amendment, or rescission of the bylaws in this part may be placed on a future Board agenda without the approval of the Chair upon a vote of two-thirds of the membership of the Board (as fixed by statute).

(e) *Notice.* (1) The Chair shall provide a schedule in writing of Board meetings for the upcoming year at least thirty (30) days prior to the January Board meeting and shall provide to each Board member the agenda and supporting materials for each meeting at least ten (10) work days prior to each meeting. The ten (10) days notice requirement may be waived upon a two-thirds vote by the members present at the Board meeting and any proxies to suspend the rules of order.

(2) The public shall receive notice of the dates of meetings for the upcoming year at least thirty (30) days prior to the January Board meeting. Notice may be by publication of the

schedule of meetings on the agency's website and/or through any other means by which interested members of the public are likely to access it. The notice shall include a statement that the Board will provide reasonable accommodations, absent an undue burden, that will enable members of the public to participate in meetings.

(f) *Cancellation.* The Chair may cancel a regular meeting of the Board by giving written notice of the cancellation at least ten (10) work days prior to the meeting where practical. If the canceled meeting is a public meeting, members of the public will be given notice of its cancellation at the same time as Board members.

(g) *Special meetings.* The Chair may call special meetings of the Board to deal with important matters arising between regular meetings which require action by the Board prior to the next regular meeting. Voting and discussion shall be limited to the subject matter which necessitated the call of the special meeting. All Board members shall receive reasonable advance notice of the time, place, and purpose of the special meeting. If the special meeting is also a public meeting, members of the public shall be given notice of its occurrence at the same time as Board members, and such notice shall indicate that the Board will provide reasonable accommodations for members of the public to participate in the meeting, absent undue burden.

(h) *Record.* The Executive Director shall maintain a permanent record of the minutes of all meetings and attendance. The Board shall approve the final minutes after all corrections and additions have been incorporated.

(i) *Rules for Board meetings.* Meetings of the Board shall be held in accordance with Robert's Rules of Order, except as otherwise prescribed in the bylaws in this part.

(j) *Quorum.* (1) A quorum shall be the majority of the membership of the Board (as fixed by statute). A majority of the members required for a quorum shall be public members.

(2) Proxies shall not be counted for purposes of establishing a quorum.

(3) If a quorum is not present, a meeting shall be held only for the purpose of discussion and no vote may be taken.

(k) *Voting.* (1) Only Board members may vote.

(2) Except as otherwise prescribed in the bylaws in this part, a majority vote of the members present and any proxies is necessary for action by the Board.

(3) The presiding officer shall have the same right to vote as any other member.

(4) Any member may give his or her directed or undirected proxy to any other Board member present at the meeting. Proxies shall be given in writing and submitted to the Chair prior to or at the meeting. A directed proxy shall be voided as to a specific issue if the question on which the vote is eventually taken differs from the question to which the proxy is directed.

(5) The Board may act on items of business between meetings by notational voting. At the request of the Chair, the Executive Director shall send a written ballot (which may be in the form of electronic mail) to each Board member describing each item submitted for notational voting. If any Board member requests discussion on an item, the ballots shall not be counted and the Chair shall place the item on the next Board meeting agenda for discussion and voting. Notational votes shall ordinarily occur over a period of five (5) business days, but may be extended, at the Chair's discretion, if, at the conclusion of the voting period, an insufficient number of votes have been cast to approve or disapprove an action.

(l) *Telecommunications.* A member of the Board shall be considered present at a meeting when he or she participates in person or by conference telephone or similar communication equipment that enables all persons participating in the meeting to communicate with each other.

8. In newly redesignated § 1151.7, revise paragraphs (a)(1) and (b)(2) and (3) to read as follows:

§ 1151.7 Committees.

(a) * * * (1) *Establishment.* The Board shall have an Executive Committee to serve as a leadership and coordinating committee. The Executive Committee acts on behalf of the Board in between regularly scheduled Board meetings as necessary and as authorized by delegation of the Board. In addition, the Executive Committee may perform one or more of the following duties:

(i) Review and consider recommendations and proposals from the various subject matter committees;

(ii) Review and make recommendations to the Board to amend or approve the Board's bylaws; and

(iii) Request and review all committee charters.

* * * * *

(b) * * *

(2) *Chair*. The Chair of a subject matter committee shall be elected by the Board after the election of the Chair and Vice-Chair of the Board. The Chair of a subject matter committee shall serve as a member of the Board's Executive Committee.

(3) *Membership*. Each subject matter committee shall be comprised of a minimum of five (5), and a maximum of seven (7), members. Except for the Chair of the committee who is elected by the Board, the members of the committee shall be appointed by the Chair of the Board. Members shall serve a term of one year corresponding to that of the Chair of the Board, and continue their duties until their successors have been appointed.

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General Counsel

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